IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2827 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADODARA MUNICIPAL CORPORATION - Petitioner(s)

Versus

BHARTIYA KARMACHARI SANGH & 1 - Respondent(s)

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Appearance :

MR PRANAV G DESAI for Petitioner No(s).: 1.

MR GC RAY for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1. Though served, none appears for the respondent Union. Since sufficient opportunity is given to the respondent, the matter is taken up for hearing today.

2. By way of this petition the petitioner has challenged the award dated 26th October 1999 passed by the Labour Court, Vadodara in Reference (L.C.V.) No.82 of 1990, directing the petitioner Corporation to pay them salary and other relevant benefits treating them as permanent employees w.e.f. 1st January, 1996.

3. The short facts of the case are that the respondent Union raised an industrial dispute demanding that the employees working in the U.C.D. Project of the petitioner Corporation who are the members of the said Union be made permanent and they shall be granted all other benefits flowing therefrom. The dispute was referred to the Labour Court, Vadodara. After adjudication the Labour Court passed the award as stated hereinabove, which is challenged in the present petition.

4. Mr. Desai learned advocate for the petitioner Corporation has submitted that the members of the respondent union were appointed on a project wherein 60% expenses were borne by Baroda Municipal Corporation and 40% expenses were borne out by Government of Gujarat and therefore the Labour Court has committed an error in granting the pay and other relevant benefits treating them as permanent employees w.e.f. 1st January, 1996.

5. In so far as the question with regard to the project wherein 60% expenses is borne by the petitioner corporation and 40% expenses are borne by the State of Gujarat, the same has not been considered by the Labour Court. Since the said question has not been considered, there is no finding that whether under the said project the employees are entitled the said pay scale or not. This requires serious consideration. If the project wherein the expenses are borne as aforesaid, then the members of the Union are not employees of the petitioner Corporation. In that context evidence is required to be led before the Labour Court to arrive at a conclusion. The Labour Court is required to consider the question whether the members of the respondent Union are entitled for any relief including the pay scale even if they are employed under the project in question. Therefore I am of the opinion that for this limited purpose the matter is required to be remanded to the Labour Court.

6. In the premises aforesaid, award dated 26th October 1999 passed by the Labour Court, Vadodara in Reference (L.C.V.) No.82 of 1990, is quashed and set aside. The matter is remanded to the Labour Court for considering the same afresh in light of the aforesaid

observations. The Tribunal shall decide the matter within a period of one year from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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